BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DEBRA L. WHITMORE	)	
Claimant	)	
VS.	)	
	)	Docket No. 239,548
ECONO CLAD BOOKS	)	
Respondent	)	
AND	)	
	)	
FIREMAN'S FUND INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on March 19, 1999.

ISSUES

The Administrative Law Judge found that claimant did suffer accidental injury arising out of and in the course of her employment but that she did not give notice within 10 days. Although the Administrative Law Judge found claimant had just cause for not giving notice within 10 days, he also found that she failed to give notice within the maximum limit of 75 days and therefore denied the requested benefits.

On appeal, claimant contends that she did give notice within 75 days and had just cause for failure of giving notice within the initial 10 days.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be reversed and the case remanded.

Claimant began working for respondent, a company which makes book covers, in February 1998. Claimant initially worked in auditing and then in what she describes as the "graph room." She logged in orders for the books through a computer and did layouts for

the cut out of the front of the cover. The work involved typing and extensive use of the fingers, wrists, and hands.

In May 1998, claimant was transferred to a position where she did "laying and stomping." Laying is a process involving placing the spine on a gauge to ensure that it is in the middle and centered appropriately. Stomping apparently involves running the cover through machines to glue and seal the cover. Claimant would typically stomp 1000 book covers per day. Before going to the "laying and stomping" position, claimant experienced some difficulties with her hands, wrists, arms, and shoulders, but thought it was simply soreness which would go away.

The hand symptoms worsened as claimant was doing the stomping and by the middle or last part of June it was getting worse. Claimant stated, "[I]t was getting to the point that it was really getting bad."

In late June or early July, claimant told David W. Ketterling of the difficulties she was having. Claimant's testimony and the testimony of a coworker indicate that over the next several months claimant advised Mr. Ketterling over a dozen times that her hands were bothering her. Mr. Ketterling responded on some occasions by relieving her from the duties of stomping. On other occasions, he advised her that she would need to continue but they would try to get help.

Claimant continued to work for respondent until September 1998 when she was terminated because she had more than the allotted number of absences from work. The last absence, and the reason for her termination, was on September 19, 1998, when she left work because she was sick. Claimant testified that, in addition to being sick, her hands were still hurting.

The Administrative Law Judge, in comments made at the closing of the hearing, noted that claimant had complained of pain in June or July. He concluded, however, that the complaints of pain did not give notice of an injury.

The Board agrees that complaints of pain do not necessarily constitute notice of an injury. But under the circumstances of this case, the Board concludes that the notice given by claimant was sufficient to satisfy the statutory requirements. First, it seems clear that in context the claimant's complaints were intended and were, in fact, understood as complaints that the work was causing the symptoms. Mr. Ketterling testified that he assumed that claimant's complaints were connected with her work. He acknowledges that from five to ten times claimant discussed with him the problems she was having with her hands, arms, and wrists. He responded in part by offering alternative work.

Second, the Board believes that in context the evidence suggests that the work was causing injury. Whether this injury would ultimately be permanent remained, and still

remains, to be determined. But the Board believes that the nature and extent of the complaints suggest and gave respondent notice of injury.[1]

The Board also finds this notice was within 10 days of the date of accident. The Board has previously determined that notice given before the date ultimately determined to be a date of accident for repetitive trauma type injuries satisfies the statutory requirements. The evidence relative to date of accident is not fully developed at this point. But it seems clear that the condition continued to progress up to the time, and likely after the time, claimant gave notice. The most likely date of accident from the current state of the evidence would be the last day worked. In either case, the notice was given earlier than 10 days after the date of accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bryce D. Benedict on March 19, 1999, should be, and the same is hereby, reversed and remanded to the Administrative Law Judge for further decision regarding what, if any, temporary total disability benefits should be ordered and what, if any, medical treatment should be ordered.

IT IS SO ORDERED.

Dated this ____ day of June 1999.

BOARD MEMBER

c: Bruce C. Harrington, Topeka, KS
Matthew J. Stretz, Kansas City, MO
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director

[1] On appeal, claimant relies upon a much-later application for hearing as notice. But as the Board has found claimant gave notice in late June, it is unnecessary to determine whether the application for hearing satisfied the notice requirements.